D. **Existing Competition For Long Distance Customers**

Pacific's characterization of its place in the competitive long distance telephone market and the role of the PB Awards Program is disingenuous. *See* Opening Br. at 6. Competition between the parties is imminent -- PB Com's application to enter the long distance services market is now pending before the California Public Utilities Commission, and PB Com has stated that it intends to have one million long distance customers within its first year. Levine Decl., ¶¶ 12, 15, ER 582, 583; Bisazza Decl., Exhibit 3, ER 110-18. While Pacific suggests that direct competition in terms of providing long distance telephone service is subject to regulatory timetables, it fails to point out that competition for customers need not wait for Pacific's actual delivery of long distance services. Levine Decl., ¶ 15, ER 583. The best evidence of existing competition for long distance customers is the PB Awards Program itself. The program is designed to lock in customers today and provide incentives for customers to remain loyal to Pacific in order to redeem prizes with accumulated points, with the ultimate goal to switch those customers to PB Com to continue long distance service and the accumulation of points. Mannella Decl., ¶¶ 11, 14, ER 477, 478.

## E. The Injunction

The Long Distance Carriers filed complaints[11] for breach of contract, violation of the Telecommunications Act of 1996, misappropriation of trade secrets, and other related claims based upon Pacific's use, for its own marketing purposes, of proprietary long distance customer usage and billing information transmitted electronically by the Carriers to Pacific Bell under contract.

Despite Pacific's best efforts to mask the issue, the district court recognized that the question before it was not whether Pacific Bell was entitled to reward its customers' long distance usage, but rather whether it was entitled to extract long distance billing information "*from the proprietary databases* created by plaintiffs and made available to Pacific for the limited purposes of billing and collecting for long distance services." Ord. at 7:14-19, ER 679 (emphasis in original).

The district court granted the Carriers' motion for a preliminary injunction, finding that "plaintiffs [had] demonstrated a strong likelihood of

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11 AT&T and MCI filed a joint complaint, and Sprint filed its own complaint, containing similar allegations. The cases were consolidated in an order dated May 22, 1996.

success on their breach of contract, trade secret, and telecommunications act claims." Ord. at 27:8-10, ER 699. The court also found that Pacific's misappropriation of the Carriers' proprietary information caused immediate and irreparable harm to the Carriers, and that the balance of hardships tipped in their favor. Ord. at 25:3-6, 26:19-20, ER 697, 698.

The district court entered a narrowly tailored order enjoining only the defendants' "use or disclosure of the *plaintiffs' databases* in connection with Pacific's loyalty marketing program." Ord. at 29:12-14, 30:9-25, ER 701, 702 (emphasis added). Pacific may still conduct the loyalty program and may still award points for long distance charges. *Id.* To do so, however, it must incur the expense of gathering this information from permissible sources, such as the customers themselves. Ord. at 30:26-28, 31:1-4, ER 702, 703.

## IV. SUMMARY OF ARGUMENT

The district court properly issued a preliminary injunction because the Long Distance Carriers demonstrated a strong likelihood of success on the merits. By using the Carriers' proprietary information for its own business purposes, Pacific Bell breached the Billing Agreements, and defendants violated the Telecommunications Act, and misappropriated the Carriers' trade secrets.

Pacific's contention that TBR is not proprietary misses the point. The issue is not who "owns" TBR. The issue is that Pacific Bell derives TBR using the Carriers' proprietary data, obtained under contracts which severely restrict its use, and then discloses TBR to its affiliates in violation of its contractual and statutory duties to maintain confidentiality.

Pacific's contention that TBR is Customer Proprietary Network Information ("CPNI") is likewise irrelevant: Pacific can obtain long distance billing data directly from its customers, but it cannot take that information from the Carriers' databases. The customers are strangers to the Billing Agreements; their "releases" do not relieve Pacific of its contractual and statutory duties to protect the Carriers' proprietary information.

On appeal, Pacific has not demonstrated that the district court relied on an erroneous legal premise or abused its discretion. Further, Pacific does not dispute the district court's findings that its misuse of the Carriers' billing information causes irreparable harm. Because the Carriers have demonstrated a combination of likelihood of success on the merits and irreparable harm, this Court should affirm.

## V. ARGUMENT

### A. Standard Of Review

"Review of a ruling on a motion for preliminary injunction is very limited." *Oakland Tribune, Inc. v Chronicle Pub. Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985) (quotation omitted). A preliminary injunction "'will be reversed only if the district court relied on an erroneous legal premise or abused its discretion.'" *Gregorio T. v. Wilson,* 59 F.3d 1002, 1004 (9th Cir. 1995) (quoting *Sport Form, Inc. v. United Press International,* 686 F.2d 750, 752 (9th Cir. 1982)). The Court should consider "whether the district court got the law right, that is, whether 'the court [employed] the appropriate legal standards which govern the issuance of a preliminary injunction, [and] if, in applying the appropriate standards, the court misapprehended the law with respect to the underlying issues in litigation.'" *Id.* (quoting *Sports Form* (alterations in original)).

The Court should not review "the underlying merits of the case. As long as the district court got the law right, 'it will not be reversed simply because the appellate court would have arrived at a different result if it had applied the law to the facts of the case. Rather, the appellate court will reverse only if the district court abused its discretion.'" *Id.*

Here, Pacific does not argue that the district court erred in applying the law pertaining to preliminary injunctions.[12] It contends that the court misapplied contract principles when it determined that Pacific Bell's use of the Carriers' proprietary information was a breach of the Billing Agreements, that it misinterpreted the Telecommunications Act, and that it incorrectly determined that the Carriers' confidential billing databases were trade secrets.

These contentions are all grounded in the same premises: that TBR is not proprietary information, and that the Telecommunications Act relieves Pacific

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12 The district court correctly identified the "traditional test" for determining whether a preliminary injunction should issue. Ord. at 4, ER 676.

> "Under the traditional test, a party is entitled to a preliminary injunction if it demonstrates: (1) a likelihood of success on the merits and a possibility of irreparable injury, or (2) the existence of serious questions on the merits and a balance of hardships tipping in its favor. These are not two independent tests, but the extremes of the continuum of equitable discretion."

*Id.* (quoting *National Wildlife Fed. v. Burlington Northern R.R.*, 23 F.3d 1508, 1510 (9th Cir. 1994)).

Bell of its contractual and statutory duties to maintain the confidentiality of the Carriers' proprietary information. Both these premises are false.

### B. The District Court "Got The Law Right" When It Concluded That The Long Distance Carriers Are Likely To Prevail On The Merits

The district court held that the Long Distance Carriers had "demonstrated a *strong* likelihood of success on their breach of contract, trade secret and telecommunications act claims." Ord. at 27:8-9, ER 699 (emphasis added). It did not rely on any erroneous legal premise or abuse its discretion in coming to that conclusion.

#### 1. The District Court Correctly Concluded that Pacific Bell Breached the Billing Agreements

Pacific admits that, by contract, the Carriers' long distance billing databases are proprietary. It admits that Pacific Bell uses these billing databases to calculate TBR, which is simply the sum of long distance charges and Pacific Bell charges.[13] Pacific also admits that the Billing Agreements restrict the use of

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[13] Pacific argues on appeal, for the first time, that long distance billing information "does not appear on the first billing page" and that TBR is merely taken from the bottom of the first page of the customer's telephone bill. Opening Br. at 6. This argument has three flaws. First, it was not raised below. Second, it

(Footnote Continued on Next Page.)

the Carriers' proprietary information to specified billing and collection obligations. Finally, Pacific admits that Pacific Bell transferred TBR to PB Extras, and that PB Extras uses TBR in its marketing program. Pacific has never contested that the Carriers have not authorized the use of their proprietary long distance data in Pacific's marketing program. See generally pp. 8-10, above.

All these admissions amount to a remarkable concession, which the district court recognized: "Pacific is clearly in breach of its Billing Agreements." Ord. at 6, ER 678.

That should be the end of the matter. Rather than accept the inevitable consequences of these admissions, Pacific engages in misdirection. To divert attention from the controlling contract provisions, Pacific asserts that it can avoid the contracts for two reasons: first, that TBR is "a different animal" not

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(Footnote Continued from Previous Page.)

is false: total long distance charges do appear as a distinct line on the first billing page. Third, it is a distinction without a difference. Where the total charge appears on a bill, or the fact that it appears at all, does not change what it is--the addition of proprietary long distance charges to Pacific Bell charges. Pacific has access to those long distance charges only from the Carriers' proprietary databases, and only for the purpose of rendering the customers' bill.

mentioned in the Billing Agreements, and second, that Pacific or the customers "own" the TBR and can use it without the Carriers' authorization. These arguments are self-defeating because they would require the Court to interpret the contracts in violation of the axiom that a contract must be interpreted so as to make it lawful, operative and reasonable. Cal. Civ. Code § 1643.

**a. Pacific's argument that "TBR is a different animal" renders meaningless the contracts' confidentiality provisions**

Pacific contends that the Billing Agreements' confidentiality provisions do not apply to Pacific Bell's disclosure of total billed revenue to PB Awards. It reasons that the simple arithmetic function of adding Pacific Bell's local charges to the Carriers' long distance charges deprives the Carriers' data of confidentiality, leaving Pacific free to use the information for any purpose. At oral argument, Pacific made its position clear:

> [Mr. Lawyer:] . . .[C]learly it's theirs the first time they send it over because we haven't done anything with it, haven't changed it, haven't created a new animal called TBR at that time. *When they send it over in its pure and pristine state we don't debate it's theirs . . . .* Once we manipulate it for purposes of creating a bill, that's our data stream, those are our computers, our software that creates this animal called total bill revenue.
>
> THE COURT: So you're saying that when you--when you receive what you admit is confidential proprietary

> information from them, once you combine your information with it it's no longer their confidential proprietary information?
>
> MR. LAWYER: It's a different animal. TBR becomes a different animal is what we're saying.

Tr. Oral Arg. at 16:22-25, 17:1-13, ER 719-20 (emphasis added).

This absurd argument ignores the fact that the Billing Agreements *contemplate* that in performing its billing and collection services, Pacific Bell will add its own charges to the long distance charges extracted from the Carriers' proprietary databases in order to bill the customer, creating a total which Pacific calls TBR.[14] *See* Elizondo Decl. ¶¶ 4-8, ER 279-82. Yet, under Pacific's reading

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14 Pacific complains that, among the several independent grounds on which likelihood of success on the merits was found, the district court relied on a provision of the Billing Agreements that the Carriers had not cited. *See* Ord. at 6:7-16, 8:1-7, ER 678, 680. The court gave the parties an opportunity to address the commingling provision at the hearing. Tr. Oral Arg. at 20:22 - 22:1, ER 723-25. To the extent that the commingling provision is relevant, it supports the Carriers' position. It provides that in situations in which masking or screening of proprietary information is impracticable, (such as in preparation of customer bills), a party who becomes privy to proprietary information "shall neither use nor disclose the proprietary information, except as required to fulfill its obligations under this Agreement." See Ord. at 67-16, ER 678. Having conceded that the loyalty marketing program is not one of the obligations under the Billing Agreements, Pacific is left merely to reassert that TBR is not proprietary. But as

(Footnote Continued on Next Page.)

of the Billing Agreements, that simple mathematical calculation robs the Carriers' data of confidentiality. If Pacific is correct, then the confidentiality provisions--the heart of the Agreements--are meaningless. [15] *See* 5/7 Arnett Decl., ¶ 19, ER 79; *see also* Tr. Oral Arg. at 18:22-25; ER 722 (The court asks Pacific, "Why would you all insert an agreement in a billing agreement that recognizes that certain information is confidential and proprietary if one easy way to avoid those provisions is [to] combine your information with it?").

Pacific cannot do indirectly what it acknowledges it may not do directly. If Pacific were correct that merely manipulating the data eliminates confidentiality, Pacific would be entitled to (1) take the Carriers' proprietary information, (2) add Pacific Bell's charges to create (on Pacific's theory) a non-

(Footnote Continued from Previous Page.)

discussed above, TBR is composed of proprietary information that can be used only for purposes authorized in the Billing Agreements.

15 Unsurprisingly, Pacific does not cite any authority for this proposition. Indeed, the better view is that the resulting sum is itself proprietary. *See Peripheral Devices Corp. II v. Ververs*, 1995 U.S. Dist. LEXIS 11389, *26-27 (N.D. Ill. 1995) (when confidential and non-confidential data are combined on a database, the resulting database is subject to confidentiality restrictions).

proprietary TBR number, (3) subtract Pacific Bell's charges from the non-proprietary TBR number, and (4) then make unrestricted use of the resulting sum.[16] That resulting sum, of course, is nothing more than the total long distance charges, which Pacific admits are proprietary to the Carriers.

What has been added can easily be subtracted. The district court "got the law right" when it determined that Pacific cannot circumvent the contracts merely by adding its own charges to the Carriers' confidential billing information.

**b. Pacific's characterization of the Carriers' data as "CPNI" does not absolve it of breach of contract**

The district court also properly rejected Pacific's argument that the Telecommunications Act of 1996 ("the Act") permits Pacific's intentional violation of the Billing Agreements. Pacific contends that once it extracts total long distance charges from the Carriers' proprietary databases and adds Pacific Bell local charges to calculate TBR, the information becomes CPNI under the Act. Pacific then argues that, under the Act, the customer may authorize disclosure of

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[16] Pacific, of course, knows precisely what the customer's Pacific Bell charges are, so disclosure of the TBR is effectively disclosure of the Carriers' proprietary billing information.

the TBR from Pacific Bell to PB Extras. However, the customer's right to confidentiality and use of its information and the Carriers' right to confidentiality and use of their data are not mutually exclusive.

Under the Act, information relating to customers' use of telecommunications services "made available to the [telecommunications] carrier by the customer solely by virtue of the carrier customer relationship; and [] information contained in [telephone] bills" is defined as CPNI. 47 U.S.C. § 222(f)(1). The statute prohibits any telecommunications carrier from using or disclosing CPNI which it receives or obtains "by virtue of its provision of a telecommunications service" without the customer's approval. 47 U.S.C. § 222(c)(1).

Pacific asserts that TBR becomes CPNI by virtue of appearing on the customer's bill, and that Pacific is entitled to use that information so long as it has the customers' permission. Under Pacific's view, the customer has sole control over data that may qualify as CPNI, and the Carriers could never protect any proprietary data that also happens to appear on the customer's bill. The district court properly rejected this interpretation. Ord. at 12 n.6, ER 684. The language of the statute does not require such an anomalous result.

Even if the Court were to assume that total billed revenue is CPNI, that characterization does nothing to resolve the question of whether Pacific Bell breached the Billing Agreements. Because the breach is in the *source* of the data, Pacific Bell cannot discharge its duty to the Carriers merely by procuring purported customer releases. For example, consider a customer's name that is transmitted from the Carriers to Pacific Bell for use in billing. That customer's name appears on his bill, and that customer has every right to use his own name, and to disclose his name to Pacific Bell. Nevertheless, Pacific does not have the right to extract that name from the Carriers' databases in order to build itself a potential customer list.

The CPNI provisions, which were intended to protect customers' privacy, do not release Pacific from its concurrent -- but separate -- contractual and statutory obligations to the Long Distance Carriers to respect the confidentiality of their proprietary billing information. The district court did not abuse its discretion or rely on an erroneous legal premise in determining that "[d]efendants' use of the TBR databases which are derived from plaintiffs' proprietary information results in the unauthorized disclosure of that information." Ord. at 12:8-10, ER 684.

### 2. The District Court Correctly Concluded that Pacific Violated the Telecommunications Act

As discussed above, nothing in the Telecommunications Act suggests that Pacific may ignore its preexisting contractual obligations. Indeed, a related provision explicitly imposes a duty upon Pacific to protect the Carriers' proprietary information: the Telecommunications Act provides that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers. . . ." 47 U.S.C. § 222(a).

The district court held that by disclosing to PB Extras the TBR information derived from the Carriers' confidential billing data, "Pacific Bell provides a list of plaintiffs' customers who have high TBRs, and who are thus likely to be heavy users of long distance services. This list of plaintiffs' best customers is clearly the sort of proprietary information which Congress intended to protect by enacting § 222(a) of Title 47." Ord. at 13:4-9, ER 685 (footnote omitted).

Pacific's only response to the plain language of this statute is to repeat its constant refrain that the TBR is not the proprietary information of the Carriers. It tries again to convince the Court that the Carriers' confidential billing data is rendered unprotected once Pacific performs the simple arithmetic of adding its own charges to the Carriers',[17] but Pacific never addresses its duty under the statute to protect the Carriers' data. Likewise, Pacific argues again that because the information is CPNI, it is free to disclose the data once it has the customers' permission. This interpretation would require the court to read §§ 222(a) and 222(c) as mutually inconsistent. There is no reason to do so: the two provisions work in harmony. Characterization of information as confidential for purposes of protecting the customer does not make that same information unprotected with respect to the Carriers. Pp. 25-27, above; *see also* Ord. at 12 n.6, ER 684.

### 3. The District Court Correctly Concluded that Pacific is Misappropriating Trade Secrets

The district court found, as a third, independent, basis for granting the preliminary injunction, that Pacific's use of the Carriers' confidential billing information amounted to misappropriation of trade secrets under the Uniform Trade Secrets Act, Cal. Civ. Code § 3426.2. In its opposition to the Carriers' motion for preliminary injunction, Pacific did not respond directly to the trade

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17 This argument has been fully answered above. Pp. 21-24.

secret claims. *See generally* Opp. to Application for Prelim. Injunction, ER 588. Instead, as the district court noted, the defendants "apparently rely[] on their general argument, which the Court has rejected, that plaintiffs do not own the TBR data in question." Ord. at 15:2-5, ER 687.

The Carriers' proprietary billing information fits squarely within the statutory definition of trade secret information: it is information that "[d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and . . . [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3426.1(d). The Carriers' confidential data loses its value once it is made known to a competitor or potential competitor such as Pacific, and the Billing Agreements evidence the elaborate steps the Carriers have taken to maintain the secrecy of this information. Pp. 5-7, above.

On appeal, Pacific does not try to convince this Court that the carefully guarded, contractually protected billing information the Long Distance Carriers transmit to Pacific is not a trade secret. Rather, Pacific repeats, once again, its contention that the TBR is not the Carriers' proprietary information.

This argument is no more persuasive for having been repeated a third time. (See pp. 21-22, 28, above.)

Pacific's one new argument is similarly without merit. It claims here and at other points in its brief that the district court incorrectly extended protection to the Carriers' *databases*, rather than to their confidential billing information. Opening Br. at 11-12, 17, 19-20. It insists that the Carriers never complained that their databases were being compromised.[18] Yet the cases Pacific cites favor the Carriers' position. As Pacific acknowledges, a database is a trade secret if the data contained in the database is the proprietary information of the owner of the database. Opening Br. at 11; *see, e.g., One Stop Deli, Inc. v. Franco's, Inc.*, 1993 U.S. Dist. LEXIS 17295, *26-27 (W.D. Va. 1993) (plaintiff's customer information database was a trade secret because it gave plaintiff a business

18 Pacific's insistence that the Carriers never alleged in their complaints that their "databases" were compromised exalts form over substance. Plaintiffs' complaint refers specifically to "data and records contained in invoice files," (see pp. 4-5 n.5, above), commonly known as a database. *See* American Heritage College Dictionary, defining database as "[a] collection of data arranged for ease of retrieval." Even if Pacific's hypertechnical argument were correct, the Carriers would be entitled under Fed. R. Civ. P. 15(b) to conform their complaints to the issues raised in the proceedings, even after judgment.

advantage which derived both from the data itself and from the unique means of managing and utilizing the data); *MAI Systems Corp. v. Peak Computer, Inc.* 991 F.2d 511, 520 (9th Cir. 1993), *cert. dismissed,* 510 U.S 1033 (1994) (customer information database can be a trade secret because it allows a competitor to better target potential customers and to tailor services to the customers' needs). Pacific has admitted, as it must, that the customer information the Carriers transmit to Pacific Bell for billing purposes is proprietary. See pp. 8-9, above.[19]

Pacific's "database" argument is at bottom just one more iteration of its contention that the Carriers have no proprietary interest in the TBR. This argument ignores the obvious: the Carriers' confidential data is contained in their databases, and it is from these databases that Pacific Bell calculates TBR.

The district court rejected in every context Pacific's argument that the calculation of TBR does not involve the misuse of the Carriers' proprietary

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[19] Pacific also notes that a database can be proprietary if it provides a "unique means of managing and utilizing th[e] data." Opening Br. at 12 (citing *One Stop Deli*, 1993 U.S. Dist. 17295, *26-27). The Carriers presented the district court with ample evidence that its databases were proprietary in format as well as substance. See pp. 6-7, above.

information. (See pp. 23-24, 27, above.) It did not abuse its discretion or rely on an erroneous legal premise in doing so.

### C. The District Court Did Not Abuse Its Discretion By Issuing A Preliminary Injunction Where The Carriers Showed A Strong Likelihood Of Success On The Merits And A Possibility Of Irreparable Harm

The district court recognized that Pacific's admitted disclosure of confidential information is an irreparable harm, because "'no amount of money will make it confidential again.'" Ord. at 24:15-25:6, ER 696-97 (quoting *Peripheral Devices Corp. II v. Ververs*, 1995 U.S. Dist. LEXIS 1138927-28 (N. D. Ill. 1995)). On appeal, Pacific does not contest the district court's findings that there was a likelihood of irreparable harm to the carriers if Pacific were permitted to continue to use the Carriers' proprietary information to administer the loyalty program.

This Court should evaluate whether the district court correctly weighed these factors on a "sliding scale in which the degree of irreparable harm increases as the probability of success on the merits decreases." *Big Country Foods, Inc. v. Board of Educ. of Anchorage Sch. Dist.*, 868 F.2d 1085, 1088 (9th Cir. 1989). There is no room for doubt that the district court appropriately exercised its discretion in weighing whether a preliminary injunction should issue.[20] It found that the Carriers had a "strong likelihood of success" on the merits (Ord. at 27:8-9, ER 699), and Pacific itself concedes irreparable harm.

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20 Pacific mentions in a footnote that the balance of hardships should have tipped in its favor because "disallowing use of TBR would force a substantial, multi-million dollar restructuring of the program if TBR could not be used pending trial." Opening Br. at 20. Pacific misrepresents the court's narrow injunction. Under the court's order, Pacific is free to run its loyalty program as originally conceived. It must simply find another source for information on the customers' long distance usage. For example, Pacific Bell can ask its customers to send in their bills. Pacific wants to avoid that result because it would be time-consuming and expensive. It would prefer simply to take this invaluable information, for free, from its future competitors.

## VI. CONCLUSION

The district court did not abuse its discretion or rely on any erroneous legal premise in determining that an injunction was warranted in this matter. Its order should be affirmed.

DATED: Oct. 7, 1996 McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

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**Page:** 1 of 39

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KMF

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SEP 27 4 41 PM '96

BY DEPUTY

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| MCI TELECOMMUNICATIONS CORPORATION, | § | |
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| Plaintiff | § | |
| | § | |
| VS. | § | CIVIL ACTION NO. A 96 CA 651 SS |
| | § | |
| SOUTHWESTERN BELL TELEPHONE COMPANY, SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC. and SBC COMMUNICATIONS, INC., | § | |
| | § | |
| Defendants. | § | |

## PLAINTIFF MCI TELECOMMUNICATIONS CORPORATION'S MOTION FOR PRELIMINARY INJUNCTION

NOW COMES plaintiff MCI Telecommunications Corporation ("MCI") and submits this, its Motion for Preliminary Injunction, and respectfully states as follows:

## I.
## Summary of Argument and Procedural Background

MCI seeks a preliminary injunction to prevent Southwestern Bell Telephone Company ("SWB") from turning over MCI's proprietary customer information to SWB's affiliated companies Southwestern Bell Communications Services, Inc. ("SWBCS") and SBC Communications, Inc. ("SBC"). This request for injunctive relief arises from SWB's abuse of its contractual relationship with MCI, in which MCI provides proprietary customer billing information to SWB so that SWB can prepare a consolidated bill with SWB's local charges and MCI's long distance charges. MCI provides such information to SWB under the terms of a billing agreement that requires SWB to maintain the confidentiality of the billing information and to use that information only for billing purposes. But for the billing agreement, MCI would not provide such confidential, proprietary information to SWB.

SWB and the other defendants, however, are attempting to circumvent these contractual provisions by a postcard campaign designed to solicit customer "releases" of such information, so that SWB can provide this sensitive data to SWBCS, the new long distance affiliate of SWB and soon-to-be competitor of MCI, thereby permitting SWBCS to use such information to market directly in competition with MCI. Such conduct (i) violates the Telecommunications Act of 1996, (ii) breaches the parties' contract, and (iii) constitutes a misappropriation of trade secrets, for which an injunction should issue.[1]

The same claims have been asserted and the identical relief is also being sought by AT&T Communications of the Southwest ("AT&T") against these same defendants in a suit pending in the Austin Division of the Western District of Texas as Civil Action No. A-96-397-SS, styled *AT&T Communications of the Southwest, Inc. V. Southwestern Bell Telephone Company, Southwestern Bell Communications Services, Inc., and SBC Communications, Inc.* (hereinafter "AT&T Suit"). Contemporaneously with the filing of MCI's Original Complaint and this Motion for Preliminary Injunction, MCI has also filed its Motion to Consolidate this action with the AT&T Suit. The defendants here and AT&T agree to such consolidation to avoid the potential of conflicting rulings.

In the AT&T Suit, AT&T has moved for a preliminary injunction to prevent disclosure of AT&T's customer billing information to SWBCS, also asserting (i) violation of the Telecommunications Act of 1996 (ii) breach of contract and (iii) misappropriation of trade secrets. SWB and its affiliates have moved for summary judgment in the AT&T Suit, arguing that their actions are permitted by the Telecommunications Act of 1996 and, hence, do not constitute either a breach of contract or a misappropriation of trade secrets. The Honorable Sam Sparks heard the parties' respective motions on September 20, 1996, and has taken the matter under advisement, announcing that the Court

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1 MCI asserts other causes in its Complaint but relies upon these three claims for its demonstration of likelihood of success on the merits.